



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 218 OF 2015**

**DAMARIS MUTHONI MWANGI .....PLAINTIFF**

**VERSUS**

**STELLAH MUMBUA KILONZO .....1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR, MACHAKOS.....2<sup>ND</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. In the Plaintiff dated 7<sup>th</sup> October, 2015, the Plaintiff averred that on 24<sup>th</sup> October, 2014, she entered into a Sale Agreement with the 1<sup>st</sup> Defendant for land known as Mavoko Town Block 2/17540 at a consideration of Kshs. 550,000.
2. The Plaintiff averred that he paid to the 1<sup>st</sup> Defendant a deposit of Kshs. 431,000; that the balance of Kshs. 119,000 was to be paid upon successful registration of the completion documents and that on 26<sup>th</sup> January, 2015, the completion documents together with the original Title Deed were presented to the 2<sup>nd</sup> Defendant for registration.
3. According to the Plaintiff, it became apparent that the documents were misplaced in the 2<sup>nd</sup> Defendant's office; that the 1<sup>st</sup> Defendant refused to participate in the process of reconstructing the documents and that the Plaintiff should be allowed.
4. The 1<sup>st</sup> Defendant did not file a Defence despite being served with Summons to Enter Appearance. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed a Defence in which they denied that the Plaintiff lodged completion documents with the 2<sup>nd</sup> Defendant.
5. In her evidence, the Plaintiff, PW1, stated that she bought a parcel of land known as Mavoko Town Block 2/17540 from the 1<sup>st</sup> Defendant; that he paid the requisite deposit of Kshs. 431,000 leaving a balance of Kshs. 119,000 and that the balance of the purchase price was to be paid upon successful registration of the title in his name.
6. According to PW1, the completion documents were lodged with the 2<sup>nd</sup> Defendant on 26<sup>th</sup> January, 2015 and that on further inquiry, the land registry officials in Machakos informed her that the completion documents had been misplaced. PW1 informed the court that her efforts to have the file reconstructed have been unsuccessful.
7. The Plaintiff produced in evidence the Agreement for Sale dated 24<sup>th</sup> October, 2014; the official search dated 22<sup>nd</sup> October, 2014; the official receipt showing the payment for registration of the transfer dated 26<sup>th</sup> January, 2015; the Application for the consent of the Land Control Board; the Letter of consent of the Board; the receipt of the payment of Stamp Duty and the Application for registration.
8. According to the Application for Registration, the completion documents, including the Transfer documents, were submitted to the Land Registrar, Machakos, on 26<sup>th</sup> January, 2015. The Land Registrar, Machakos, did not attend court to deny that he received the said completion documents. Consequently, the evidence by the Plaintiff that he lodged all the completion documents with him is uncontroverted.
9. The evidence before me shows that the completion documents in respect of land known as Mavoko Town Block 2/17540 were misplaced by the 2<sup>nd</sup> Defendant. In the circumstances, the file in respect of parcel of land known as Mavoko Town Block 2/17540 should be reconstructed to enable the Plaintiff obtain a Title Deed in her favour.

10. For those reasons, I allow the Plaintiff's Plaintiff dated 7<sup>th</sup> October, 2015 as follows:

**a. A permanent injunction be and is hereby issued barring the transfer and alienation of the property known as Mavoko Town Block 2/17540 to any other party other than the Plaintiff, Damaris Muthoni Mwangi.**

**b. An order of specific performance be and is hereby issued to the 1<sup>st</sup> Defendant to compel her to perform her obligations under the Sale Agreement and participate in the reconstruction of the Transfer documents relating to the property known as Mavoko Town Block 2/17540.**

**c. In the event of default by the 1<sup>st</sup> Defendant in respect of any requisite obligations relating to the issuance of a replacement of Title Deed for parcel of land known as Mavoko Town Block 2/17540, the 2<sup>nd</sup> Defendant to execute all Transfer documents relating to the property known as Mavoko Town Block 2/17540 in favour of the Plaintiff and subsequent issuance of a replacement Title for the said property.**

**d. Each party to bear his/her own costs.**

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 31<sup>ST</sup> DAY OF JANUARY, 2020.**

**O.A. ANGOTE**

**JUDGE**